



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 30, 1996

Ms. Lavergne Schwender
Assistant County Attorney
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR96-1555

Dear Ms. Schwender:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100698.

The Harris County Purchasing Agent (the "county") received a request for two proposals submitted in response to Request for Proposal 95/0389. The request also sought "the selection criteria utilized and scoring of the three finalists." Although you state that much of the requested information will be released to the requestor, you explain that the companies which submitted the requested information, AMSCO International, Inc. ("AMSCO") and Fisher Capital Asset Partnerships ("Fisher"), may have proprietary interests in the information. Thus, you ask this office for a decision under section 552.305(a) of the Government Code. You have submitted the requested information to this office for review.¹

Since the property and privacy rights of third parties, AMSCO and Fisher, are implicated by the release of the requested information here, this office notified the companies of this request. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't

¹You have also submitted the proposal of SU Group in your request for a decision to this office. We note, however, that the requestor seeks only the proposals submitted by AMSCO and Fisher. This ruling, therefore, does not address whether information in the SU Group proposal may be released by the county. Gov't Code § 301(a); Open Records Decision No. 304 (1982) (governmental body's duty to request a decision from the attorney general arises only after it receives a written request for the information.)

Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Neither AMSCO nor Fisher has responded to our notification by asserting that portions of its proposal are excepted from required public disclosure. In your letter to this office you state that the information marked confidential in the two proposals is excepted from disclosure by section 552.110 of the Government Code. You have also submitted a letter from Fisher which describes what it believes should be withheld.

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. As previously stated, neither AMSCO or Fisher responded to our notification. In the letter submitted by the county, however, Fisher states:

We hereby request that our individual (vendor/class) unit item pricing information be classified and treated as confidential. Since the nature of our business [is] very competitive, we feel that any release of our equipment specific pricing structures to our competitors would negatively impact future sales and growth potential of our organization. Total program cost, however, could be released if you feel that it is required in order for Harris County to meet specific reporting obligations.

We do not believe that the county, AMSCO, or Fisher has demonstrated that the requested information constitutes a trade secret. Therefore, the requested information is not excepted from disclosure under the trade secret prong of section 552.110.

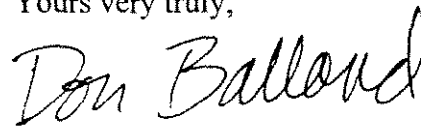
Commercial or financial information may be excepted from disclosure under the second prong of section 552.110. In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act when applying the second prong of section 552.110. In *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the Government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *Id.* at 770. A business enterprise cannot succeed in a *National Parks* claim by a mere conclusory assertion of a possibility of commercial harm. Open Records Decision No. 639 (1996) at 4. To prove substantial competitive harm, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure. *Id.*

As previously noted, AMSCO did not respond to this office regarding the information at issue in this request. Thus, AMSCO has not shown that its information

should be withheld. Additionally, we do not believe that the county or Fisher has demonstrated that the release of the information will cause substantial competitive harm. Neither the county or Fisher has met its burden under *National Parks*. The county, therefore, may not withhold any of the requested information under the second prong of section 552.110.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 100698

Enclosures: Submitted documents

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